IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4369 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VERAJI @ VAJERJI CHERAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4369 of 1997

MS PJ DAVAWALA for Petitioner

MR VM PANCHOLI APP for Respondent - State

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/05/2002

JUDGEMENT

#. This is an application under Section 482 of the Criminal Procedure code, 1973 [for short "Code"] for quashing and setting aside Criminal Case No.807 of 1994, pending before the learned Judicial Magistrate First

Class, at Rapar in Kachchh District for the offences punishable under Sections 419, 420, 427, 400 read with Section 114 of the Indian Penal Code.

#. The contesting respondent No.2 herein has filed the aforesaid complaint before the aforesaid Court against the present petitioner and other persons named in the said complaint. It has been alleged in the said complaint by the said respondent that the original accused No.1 being present petitioner was working as Talati-Cum-Mantri of Gedi village in Rapar Taluka in Kuchchh District between 1987 to 1990. That at that time original accused No.2 was working as supervisor in PWD whereas original accused No.3 was working as Deputy Engineer at Bhachau in Kuchchh District. The contesting respondent has also alleged in the said complaint that a building of a high school was required to be constructed in Fatehgadh village of Rapar Taluka. That, tenders were invited and contract of the construction of the said work was given to original accused No.5 Jagabhai Samata Harijan. It is further alleged in the said complaint that though the said accused No.5 did not complete the said construction work, original accused No.1 had agreed with accused No.5 that he (accused No.1) would undertake the said construction on commission basis. That the said construction was actually given to the accused No.5 in 1988. That construction was accordingly carried out under the supervision of accused Nos.2 and 3. It is alleged in the said complaint that the original accused Nos.3 and 4 very well knew that the construction work was not carried out by original accused No.5. That they also knew that it was done under the supervision of the present petitioner in absence of accused No.5. It is further alleged in the said complaint that the present petitioner constructed the said work upto the plinth level, departmentally and accused No.4 had cooperated in the said construction work.

#. It is further alleged in the complaint that after completion of the construction upto plinth level, the petitioner and accused No.4 contacted the present contesting respondent, original complainant and requested him to complete the remaining construction. That the contesting respondent, original complainant was not lying undertake the construction of the said work. It is also alleged by the contesting respondent in the said complaint that he was given to understand that he would be paid reasonable amount for the said construction work.

#. It is further alleged in the complaint that at that point of time, the construction work of Bhimasar Police

Station was in progress and the said work was under the contract of the contesting respondent. That on 7th April, 1988, the present petitioner sent his labourers and tractors and collected the building material lying there in absence of the contesting respondent and had put up the said materials at the place where the construction of Fatehgadh high school was going on. That even a written chit was also given by original accused No.4.

#. It is further alleged in the complaint that the present petitioner and accused No.2 did not return the said building materials to the contesting respondent and the contesting respondent was required to undertake further construction of Fatehgadh high school. That even a written contract on a stamp paper also prepared and the signature of the contesting respondent was also obtained in the said writing, which was signed the original accused Nos.2, 3 and 4. It is also alleged in the said complaint that in the said writing, a reference was made to one Bhupaji Cheraji Thakor. In fact, there was no person having the name of Bhupaji Cheraji Thakor and that fact was within the knowledge of the present petitioner.

#. It is further alleged in the said complaint that some part of the construction work of the said high school was carried out by the contesting respondent and after doing some work, the contesting respondent refused to do further construction work, as he was running in loss. That thereafter, the present petitioner with the help of accused Nos.2 and 3, undertook remaining construction work in his own way. That the work was not upto satisfaction and as per the requirement. That false and fabricated bills and vouchers were prepared and record was also false and fabricated. That even the construction work was of a low quality and it was likely collapse any point of time. It is also alleged in the said complaint that necessary applications were made, but no response was received and, therefore, the complaint was filed by the contesting respondent on 15/03/1994.

#. The learned Magistrate passed an order for sending the complaint to the Police Station for investigation and report under Section 156(3) of the said Code. It appears from the record that the Investigating Officer conducted the investigation and submitted a report for issue of B-Summary at the clause of the said investigation.

#. The contesting respondent appeared before the Court and submitted objections against the grant of B-Summary. The learned Magistrate heard the parties and passed an order to the effect that there was a prima facie case for

proceedings ahead. The learned Magistrate registered the complaint of the complainant and process was issued against the accused including the present petitioner.

#. Being aggrieved and dissatisfied by the aforesaid order, the petitioner has preferred this application before this Court for quashing the said order of the learned Magistrate and for quashing the said complaint of the contesting respondent.

##. It is mainly contended that the contesting respondent had filed another complaint and, therefore, there could not be a served the complaint in respect of the same offence. It is further alleged in the application that there is a civil dispute between the parties and, therefore, criminal complaint is not maintainable. It is, therefore, contended that in above view of the matter the present petition is required to be allowed and the complaint is required to be quashed and set aside.

##. It appears from the record that the notice was issued at the first instance and rule was also issued thereafter. Mr.V.M.Pancholi, learned APP appears for respondent No.1 in response to the service of notice of rule. Respondent No.2, original complainant was duly served, but nobody appeared on behalf of the said complainant. I have, therefore, heard Ms.P.J.Davawala, learned advocate for the petitioner and Mr.V.M.Pancholi, learned APP for the respondent - State. They have taken me through the complaint, the order of the learned Judicial Magistrate and the papers relating to the B-Summary.

##. Ms.P.J.Davawala, the learned advocate for the petitioner has argued at length that the complainant had already filed another complaint, which as resulted into acquittal and, therefore, the second complaint on the same cause, is not maintainable. For this purpose, she has drawn my attention a judgment of the Court of the learned Judicial Magistrate (F.C.), at Rapar [Annexure-B, at Page 19]. On going through the said judgment at page-19, it transpires that it is a judgment in Criminal Case No.300 of 1988, it relates to the offences punishable under Sections 352, 504(a) and 506(2) of the Indian Penal Code. The said complaint appears to have been filed against one Rajubha Khetubha of village Gedi, in Tal.Rapar, of Kutch - District. It seems to be a case of an offence said have been taken place on 05/06/1988 at 3.30 a.m.

##. Firstly, the said complaint relates to different offences. Moreover, the accused named in the said complaint is not of the present petitioner. It is true that the accused shown to be as accused in Criminal Case No.300 of 1988 is different from the accused in Criminal Case No.807 of 1994. At the same time, the offences quoted in the said Criminal Case No.300 of 1988 are different from Criminal Case No.807 of 1994. In that view of the matter, the provisions relating to the second complaint in respect of the similar offence will not applicable since the complaints are different, the dates of offences are different, the facts are also different and the allegations are different. In that view of the matter, it is clear that the argument that this is a second complaint in respect of the same offence, is not acceptable.

##. Another aspect of the case is that in the previous complaint, there was an allegation that the materials were taken away by the accused persons named in the complaint and that the said building materials belonged to and possessed by the contesting respondent and, therefore, the offences punishable under Section 379 of the Indian Penal Code was made out. Now, it is to be seen an offence punishable under Section 379 has not been alleged in the title of the complaint. This being a warrant triable private complaint, before framing of charge evidence will have to be recorded and at that stage, on the basis of the evidence recorded by the learned Magistrate, it would be open to the present petitioner to plead that the offences narrated in the complaint have not been made out prima facie and, therefore, the present petitioner may be discharged from the offences mentioned in the complaint. However, for the purpose of present application, it cannot be said that no offence is made out even prima facie.

##. Another argument advanced by Ms.P.J.Davawala is that there is a civil dispute between the parties and, therefore, criminal prosecution cannot go ahead. It is not in dispute that the facts narrated in the complaint shows that there is a prima facie case of civil dispute also but the facts alleged in the complaint do not show that there is only a civil dispute without the presence of ingredients of criminal offence. Therefore, merely because there is some civil dispute in the matter, criminal complaint cannot be quashed.

##. The Court is required to consider as to whether or not there is a prima facie case showing the ingredients of some offence in the complaint and if the facts

disclose prima facie case of a criminal offence than in that case, the power under Section 482 of the code cannot be exercised to quash a complaint. The court is required to consider if there is a dispute of civil nature or whether there are ingredients relating to the criminal offences. The Court cannot sift the allegations made in the complaint. They are required to be read on their face value and they are required to be accepted to be true for the purpose of an application for quashing such complaint. The complainant is not required to state the ingredient of the offence by reproducing the section of a particular offence. If on a reading of the complaint the same offence is made out than in that event, the complaint, cannot be quashed.

##. On this point, we can consider a decision of Rajesh Bajaj v. State NCT of Delhi and others, reported in 1999 S.C. 1216, there it is observed that it was not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. It is also observed that it is also not necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. It is further observed that if factual foundation for the offence has been laid in the complaint, the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. It is further observed in the said judgment that if the facts narrated in the complaint would as well reveal a commercial transaction or money transaction, that is hardly a reason for holding that the offence of cheating would elude from such transaction. The main point to be considered is an intention of the accused persons.

##. The learned advocate for the petitioner has relied upon a decision of Trilok Singh and others v. Satya Deo Tripathi, reported in AIR 1979 S.C. 850. There it has been said that the Court can exercise the power under Section 482 of the said Code to prevent abuse of the process of any Court, where the purchaser had purchased a truck under hire purchase agreement. A default clause was introduced. The financier had seized the truck on default committed by the purchaser in making payment of instalment. Thereafter, the purchaser had filed criminal prosecution against financier, where it was laid down that the dispute raised was of civil nature and criminal proceeding initiated was an abuse of the process of the Court and, therefore, it deserved to be quashed.

##. There in that case, there was an agreement between the parties that in case of nonpayment of instalment the purchaser will be at liberty to take possession of the vehicle sold to the complainant on a higher purchase agreement. When the possession was taken by the accused concerned in accordance with the agreement between the parties then in that case, it was held that to be a civil dispute between the parties since the ingredients of dishonesty would be ex-facie absence in such a case.

##. The facts of the case before us are different and, therefore, the aforesaid decision will not apply to the case before us.

##. It would be worthwhile to refer to a decision of the Hon'ble Apex Court in the case of S.M.Datta v. State of Gujarat and another, reported in 2001 AIR SCW 3133, in order to appreciate the power functioning and jurisdiction of the Court while entertaining an application for quashing of a complaint, a FIR or chargesheet. The relevant observation could be gathered in para-[9], which is reproduced as follows :

"FIR ought not to be thwarted at the initial stages if an offence is disclosed but in the event however, the materials do not disclose an offence, no investigation should normally be permitted. Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude neither it is a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise."

##. Herein the contesting respondent has filed a criminal complaint for the offences said to have been committed by the present petitioner. It therefore, cannot be said that since there is a civil dispute, the criminal court cannot undertaken the criminal

prosecution. The civil dispute between the parties can be said to be with respect to the amount to which the contesting respondent may be entitled to recover from the petitioner for the construction undertaken by him for the Fatehgadh High School. However, the facts stated in the complaint show that apart from the aforesaid civil dispute, there are other facts leading to the criminal prosecution including the offences for raising construction of low quality.

##. In above view of the matter, it cannot be said that no offence has been made our or constituted. When the complaint disclose some offences it would be quashed by exercising the power under Section 482 of the said Code.

##. So on one hand it cannot said that there is substantial civil dispute between the parties and, therefore, the criminal complaint cannot proceed ahead. On the other hand, it cannot be said from a bear reading of the complaint that this is a second complaint for the offences in respect of which one complaint had resulted in the acquittal of the accused in the said complaint. Moreover, the present petitioner does not appear to be an accused person in the said complaint also. Lastly, on a bear reading of the complaint, it cannot be said that no offence is made out or constituted. In that view of the matter, the application is required to be dismissed.

##. The contesting respondent being original complainant has not appeared in response to the service notice of rule. However, the matter was argued by learned advocate for the petitioner and Mr.V.M.Pancholi, learned APP. It may be noted herein that Mr.V.M.Pancholi, learned APP has supported the complaint and has objected to the grant of the present application.

##. For the foregoing reasons, this application is ordered to be dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

[D. P. BUCH, J.]

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